

APPEAL NO. 110215
FILED APRIL 7, 2011

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 18, 2011.

The hearing officer resolved the sole issue before her by determining that the compensable injury of _____, extends to tendinopathy, partial tears of the subscapularis tendons, and a "SLAP type II lesion" of the right shoulder.

The appellant (carrier) appealed the hearing officer's extent-of-injury (EOI) determination, contending there is insufficient medical evidence establishing a causal connection between the work injury and the claimed EOI conditions. The respondent (claimant) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on _____; and that (Dr. M) was appointed as the designated doctor by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine EOI. The claimant testified that he injured his right shoulder at work on _____, when he was pinned between a steel beam and a forklift. The medical records reflect that the claimant was airlifted to receive emergency care for multiple severe injuries.

Dr. M, after reviewing the claimant's medical records and examining the claimant on March 29, 2010, commented on the EOI, stating that:

The [claimant] sustained multiple injuries as a result of being strapped and pinned by a forklift on _____. This includes right rib fractures with a punctured lung, right side and atelectasis. He also sustained a right shoulder SLAP tear bilateral wrist fractures, perilunate dislocations with carpal tunnel on the right and pelvis and hip crush injuries. Associated with chest injuries with lacerations of the chest and back and possible early Complex Regional Pain Syndrome. He has multiple other diagnoses, none of which are related to his above mentioned compensable injuries.

EOI

RIGHT SHOULDER SLAP TYPE II LESION

The hearing officer's determination that the compensable injury of _____, extends to a "SLAP type II lesion" is supported by sufficient evidence and is affirmed.

RIGHT SHOULDER TENDINOPATHY AND PARTIAL TEARS OF THE SUBSCAPULARIS TENDONS

Section 408.0041(a) provides in pertinent part that at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about the extent of the employee's compensable injury. 28 TEX. ADMIN. CODE § 126.7(c) (Rule 126.7(c))¹ provides in pertinent part that a designated doctor examination shall be used to resolve questions about the extent of the employee's compensable injury. Rule 126.7(d) provides that the report of the designated doctor is given presumptive weight regarding the issue(s) in question and/or dispute, unless the preponderance of the evidence is to the contrary.

(Dr. K), the claimant's treating doctor, in a letter dated October 27, 2009, stated:

This patient was involved [in a] serious forklift injury on [_____]
leading to his hospitalization at [Healthcare Provider] with bilateral wrist
fracture dislocations, shoulder injury, rib fracture with resultant
hemopneumothorax requiring closed thoracostomy, blunt spine trauma . . .

* * * *

An MRI shoulder . . . [June 2010] identifies tendinopathy and [partial] tears
of the supraspinatus, subscapularis, and a type II slap lesion, in addition to
a Type II acromion.

* * * *

I am requesting a Designated Doctor Exam to confirm that:

* * * *

2) [H]e has residual work related injuries to both wrists, the right shoulder,
and lower back which need therapy and in cases of the wrists and
shoulder, surgical attention

* * * *

¹ We note that the Division has adopted new rules concerning designated doctor scheduling and examinations effective February 1, 2011. The pertinent part of Rule 126.7(c) cited above is provided in the new Rule 127.1(a); however, the applicable rule in this case is Rule 126.7.

Although right shoulder tendinopathy and partial tears of the subscapularis tendons are listed as impressions in the right shoulder MRI performed on June 10, 2009, and listed in a letter dated October 27, 2009, written by Dr. K, the treating doctor, as part of the compensable injury of _____, there is no explanation of causation for these two claimed EOI conditions in the record. Dr. M, the designated doctor appointed on EOI, does not state in his opinion that the compensable injury includes right shoulder tendinopathy and partial tears of the subscapularis tendons. Under the facts of this case, we hold that the mere recitation of the claimed conditions in the treating doctor's medical records without attendant explanation how those two conditions, right shoulder tendinopathy and partial tears of the subscapularis tendons, may be related to the compensable injury is not a preponderance of the evidence contrary to the designated doctor's opinion regarding the extent of the compensable injury.

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). The designated doctor's opinion that the compensable injury extends to a "SLAP type II lesion" of the right shoulder, without mentioning the other claimed conditions of tendinopathy and partial tears of the subscapularis tendons, is accorded presumptive weight on the issue of EOI. Accordingly, the hearing officer's determination that the _____, compensable injury extends to right shoulder tendinopathy and partial tears of the subscapularis tendons is against the great weight and preponderance of the evidence.

We reverse the hearing officer's determination that the compensable injury of _____, extends to right shoulder tendinopathy and partial tears of the subscapularis tendons and we render a new decision that the compensable injury of _____, does not extend to right shoulder tendinopathy and partial tears of the subscapularis tendons.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of _____, extends to a "SLAP type II lesion."

We reverse the hearing officer's determination that the compensable injury of _____, extends to right shoulder tendinopathy and partial tears of the subscapularis tendons and we render a new decision that the compensable injury of _____, does not extend to right shoulder tendinopathy and partial tears of the subscapularis tendons.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge